EXECUTIVE SECRETARIAT

ROUTING SLIP

TO:		ACTION	INFO	DATE	INITIAL
1	DCI				
2	DDCI				
3	EXDIR				
4	D/ICS		✓		
5	DDI				
6	DDA				
7	DDO				
8	DDS&T				
9	Chm/NIC				
10	GC				
11	IG				
12	Compt				
13	D/Pers				
14	D/OLL				
15	D/PAO				
16	SA/IA				
17	AO/DCI				
18	C/IPD/OIS		✓		
19	W10/EC&N				
20					
21					
22					
	SUSPENSE		Date		

Remarks

Executive Secretary

7/27/84

Date

3637 (10-81)

25X1

OFFICE OF THE SECRETARY OF THE TREASURY
WASHINGTON, D.C. 20220

July 27, 1984

MEMORANDUM FOR THE VICE PRESIDENT
THE SECRETARY OF STATE
THE SECRETARY OF DEFENSE
THE ATTORNEY GENERAL
THE SECRETARY OF AGRICULTURE
THE SECRETARY OF COMMERCE
THE DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET
DIRECTOR OF CENTRAL INTELLIGENCE
UNITED STATES TRADE REPRESENTATIVE
ASSISTANT TO THE PRESIDENT FOR NATIONAL SECURITY AFFAIRS
ASSISTANT TO THE PRESIDENT & DEPUTY TO THE CHIEF OF STAFF
ASSISTANT TO THE PRESIDENT FOR CABINET AFFAIRS
CHAIRMAN, COUNCIL OF ECONOMIC ADVISORS
ASSISTANT TO THE PRESIDENT FOR POLICY DEVELOPMENT

SUBJECT Senior Interdepartmental Group on International Economic Policy

Attached is the revised working group report to the SIG-IEP on extraterritoriality. A meeting of the SIG-IEP will be scheduled to discuss this report.

Christopher Hicks
Executive Secretary and
Executive Assistant to the Secretary

Attachment

B-223B

 8420727 84-10994

United States Department of State

Washington, D.C. 20520

July 25, 1984

MEMORANDUM FOR MR. CHRISTOPHER HICKS
DEPARTMENT OF THE TREASURY

SUBJECT: Revised Extraterritoriality Report for SIG-IEP Meeting

The Department has agreed with the Department of Justice on several minor textual changes in the July 3 report of the Under Secretaries group on conflicting requirements (extraterritorial application of U.S. law). These are reflected in the attached revised report, dated July 12, and in a bracketed and underlined version of that report which shows the changes made. We request that the these documents be provided the SIG-IEP participants in advance of the rescheduled session on extraterritoriality.

Pomcttmlej
for Charles Hill
Executive Secretary

Attachments:

1. Revised Report to the SIG/IEP
2. Revised Report to the SIG/IEP - Changes Indicated

Working Group
Report to the SIG/IEP

July 12, 1984

CONFLICTING REQUIREMENTS ("EXTRATERRITORIALITY")
MANAGING THE PROBLEM

ISSUE

What additional steps should be taken to manage the problem of conflicting requirements ("extraterritoriality") and to respond to the demand for prior notice to and consultation with countries potentially affected by a proposed extraterritorial action?

BACKGROUND

A number of strong U.S. policy, regulatory and law enforcement interests have led to the application of U.S. law to persons and conduct abroad. These actions at times have clashed with the interests of other governments and produced political, economic and legal disputes. These governments have objected to what they see as U.S. intrusions into their sovereignty and U.S. efforts to control companies or activities in their territory in accordance with U.S. interests, policies and laws, regardless of their own, and are increasingly resorting to blocking laws to defend their interests as they perceive them.

Such clashes can have significant adverse impact on a range of U.S. interests. For example, U.S. subpoenas for financial records located in foreign bank secrecy jurisdictions are an important component of an aggressive enforcement strategy in such areas as the President's war on organized crime and narcotics trafficking; however, they sometimes produce not only adverse diplomatic and political reactions, but may also increase the obstacles foreign governments raise to our law enforcement needs over the long term. Re-export controls are vital to the integrity of a basic export control system; however, if imposed or changed retroactively or in situations exceeding the basic allied consensus, they can lead foreign companies interested in export to treat U.S. companies as the least preferred sources, as with the European effort to engineer U.S. engines and avionics out of Airbus Industry products. Applying U.S. sanctions and controls to foreign subsidiaries of U.S. firms may be important to the policy objective in question; however, this may adversely affect the investment and trade opportunities of American companies abroad. Moreover, unfair burdens can be imposed on the firms and individuals caught between conflicting requirements of two governments.

The U. S. has been actively engaged in bilateral discussions, principally with Canada and the United Kingdom, and multilateral discussions in the O.E.C.D., on the overall issue of extraterritoriality or conflicts of jurisdiction. In March, we signed a memorandum of understanding with Canada concerning notice and consultation on antitrust matters. We have been actively working to resolve extraterritorial evidence problems with the Swiss. While these governments have been seeking primarily to curtail the unilateral legal reach of the U.S. to persons and conduct in their territories, we have been seeking from them greater understanding of, and accommodation to, the legitimate U.S. interests which those U.S. legal requirements serve. For example, we have been seeking mutual law enforcement assistance agreements to provide an alternative to unilateral legal action in gathering evidence from abroad. We have also been actively exploring the request of the U.K. and Canada that procedures for prior notice and consultation be established for significant U.S. "extraterritorial" actions.

In May, the O.E.C.D. Member countries, at the ministerial level, endorsed a very general set of considerations and "practical approaches" (full text attached) regarding conflicting requirements, including blocking actions, which we had worked out in extensive prior negotiations. The general considerations are the following:

> "In contemplating new legislation, action under existing legislation or other exercise of jurisdiction which may conflict with the legal requirements or established policies of another Member Country and lead to conflicting requirements being imposed on multinational corporations, the Member countries concerned should:
>
> have regard to relevant principles of international law;
>
> endeavor to avoid or minimise such conflicts and the problems to which they give rise by following an approach of moderation and restraint, respecting and accommodating the interests of other Member countries[1/];
>
> take fully into account the sovereignty and legitimate economic, law enforcement and other interests of other Member countries; and

---

1/ "Applying the principle of comity, as it is understood in some Member countries, includes following an approach of this nature in exercising one's jurisdiction."

bear in mind the importance of permitting the observance of contractual obligations and the possible adverse impact of measures having a retroactive effect.

"Member countries should endeavor to promote co-operation as an alternative to unilateral action to avoid or minimise conflicting requirements and problems arising therefrom. Member countries should on request consult one another and endeavor to arrive at mutually acceptable solutions to such problems."

The "practical approaches" agreed in the O.E.C.D. are, in essence, to develop bilateral notice and consultation arrangements, consider requests for bilateral or multilateral notice and consultation outside such arrangements, give notice as soon as practicable of proposed new laws or regulations with significant potential for conflicts over "extraterritoriality", to bear in mind the value of early notice of other potentially significant extraterritorial actions, and to give prompt and full consideration to proposals which may be made by other Member countries in any such consultations that would lessen or eliminate conflicts.

This set of general considerations and approaches, which successfully defused the "extraterritoriality" issue for the May Ministerial and June Summit, was made possible by the advanced stage which had been reached in the Executive Branch consideration of how to manage the "extraterritoriality" problem, in particular a draft report of the Undersecretaries' Working Group. That draft set out an essentially agreed discussion of the problem and an action proposal for internal Executive Branch coordination and for notification of and consultation with foreign governments.

At present, the broadest outlines of the Working Group's draft action proposal regarding foreign governments have been agreed in the O.E.C.D.; talks are continuing with the United Kingdom and Canada on such issues as the extra-territorial application of export controls and anti-trust laws, as well as subpoenas for off-shore documents. However, the action proposals regarding foreign government notice and consultation and internal Executive Branch coordination remain to be completed and confirmed.

PROPOSAL

I. INTERNAL COORDINATION

A. Where U.S. actions which impinge upon foreign jurisdictions are contemplated, international law and comity call for us to consider the potentially conflicting sovereign

interests, laws or policies of those jurisdictions in deciding whether and how to act. This is also required by our need to have foreign cooperation on export, law enforcement, and other international matters and to avoid unnecessay harm to our bilateral relations. It is Executive Branch policy to do so.[2/]

B. As a general matter, each Executive Branch agency with regulatory or law enforcement responsibilities which proposes to take actions with extraterritorial impact has primary responsibility to assure proper consideration of such foreign interests, laws or policies.

C. An agency which proposes to take an action which is directed at conduct abroad and which it has reason to believe has significant potential for raising concerns over extraterritoriality on the part of a foreign state[3/] will notify and coordinate with the Secretary of State or his designee, subject to the constraints imposed by the relevant legal and operating requirements.[4/]

2/ This statement of policy, and the following provisions regarding internal coordination and notification of and consultation with foreign governments are intended solely for the guidance of the departments and agencies of the United States Government with regulatory or law enforcement responsibilities. They are not intended to, do not, and may not be relied upon to create any substantive or procedural rights enforceable by law by any party in any civil or criminal proceeding.

3/ As a general rule, this category would not include such matters as: action taken under established working arrangements with the competent authorities of foreign governments, whether in law enforcement generally, or under specific arrangements such as tax or customs agreements; routine license denials under clearly established foreign assets or re-export control guidelines where no factors indicate special foreign government concern; actions taken by officers stationed abroad within established country-team arrangements with the foreign government concerned; and actions relating to the requirements for doing business in the United States, such as quality or labelling requirements for goods to be sold here. It would include significant statements of official U.S. views on extraterritoriality or conflicting requirements, the requirements of international law or comity in such matters, or foreign government interests or positions regarding them.

4/ Operating requirements would generally preclude notice of actions which are both high volume and (continued next page)

The coordination is intended to assist the agency in considering the foreign interests, laws or policies, alternatives to unilateral action, and means to minimize difficulties.

D. Coordination procedures should ensure against undue operational burdens5/ or delays, duplication of existing arrangements and the introduction of improper considerations into the administration of the responsibilities of the respective agencies. The normal minimum time for notification should be five working days in advance of the proposed action.

E. Agencies will notify the Secretary of State or his designee, or the Chief of the U.S. Diplomatic Mission, of investigative activity proposed to be carried out by U.S. officials or agents in a foreign jurisdiction for which the consent of the foreign government has not yet been obtained.

F. Such coordination will not affect the legal responsibilities and authorities of the notifying agencies.

II. NOTIFICATION OF FOREIGN GOVERNMENTS

A. The United States will implement the understanding on notice and consultation regarding U.S. actions which impose conflicting requirements on multinational enterprises, reached

---

(continued) of largely de minimis potential for creating extraterritoriality problems, such as export license pre-clearance inquiries or tax inquiries mailed to a person abroad. Meaningful coordination may be limited or precluded, in certain cases, by: grand jury, tax information and other legal secrecy requirements; concern for human life or safety; time constraints and the need to avoid disclosures which might prejudice litigation, investigation, or sensitive sources and methods.

5/ For operational reasons, the Department of Justice would not set up procedures to identify for coordination of civil or criminal law enforcement matters handled outside of Department of Justice Washington headquarters, but would identify for coordination matters handled or considered in Washington, such as the Export Administration Act, including its antiboycott provisions, munitions control, IEEPA, Trading with the Enemy Act, neutrality laws, anti-trust (under existing procedures), and the enforcement of off-shore subpoenas for documents in jurisdictions likely to object to such actions.

within the O.E.C.D., and will apply the same general considerations and practical approaches to other U.S. actions which have significant potential for raising concerns in friendly nations regarding conflicting requirements or extraterritoriality.

B. The United States, accordingly, is prepared to:

1. Develop mutually beneficial, practical and appropriately safeguarded bilateral arrangements, formal or informal, for notification to and consultation with other friendly governments.

2. Give prompt and sympathetic consideration to requests for notification and bilateral consultation on an ad hoc basis by a country which considers that its interests may be affected by a United States measure with extraterritorial effect.

3. Inform the other concerned O.E.C.D. countries as soon as practicable of new legislation or regulations proposed by the Administration which have significant potential for conflict with the legal requirements or established policies of those countries and for giving rise to conflicting requirements being imposed on persons or firms in their territory.

4. Give prompt and sympathetic consideration to requests by friendly countries for consultations under multilateral arrangements in appropriate cases.

5. Give prompt and full consideration to proposals which may be made by other countries in bilateral or multilateral consultations that would lessen or eliminate conflicts.

C. Under arrangements for notification or consultation through the Department of State regarding action of another agency, the consent of that other agency will be required.

D. Where appropriate, notice and consultation arrangements would be negotiated in the context of efforts to secure enhanced cooperation with foreign governments in meeting U.S. objectives. In particular, it is the policy of the United States to seek mutual assistance arrangements in law enforcement and to further that policy through the inclusion of bilateral arrangements for notice and consultation.

Press Releas

PRESS/A(84)28

Paris, 18th May, 1984

COMMUNIQUE

1. The Council of the Organisation for Economic Co-operation and Development meeting on 17th-18th May at Ministerial level, agreed upon policies required to strengthen the international trading and financial system, and to extend economic recovery into durable employment-creating growth. . . . .

36. Noting the growing importance and scope of problems arising from the imposition by Member countries of conflicting requirements on multinational enterprises, Ministers agreed to strengthen bilateral and multilateral co-operation in this area in order to avoid or limit the scope of such conflicts. Accordingly they endorsed a set of general considerations and practical approaches to these problems as set out in paragraphs 23-33 of the Review Report. Ministers also noted the concern over the impact of unitary taxation on international investment and the importance of achieving an early resolution of the problem.

Report on the 1984 Review of the 1976 OECD Declaration and Decisions on International Investment and Multinational Enterprises

2. CONFLICTING REQUIREMENTS IMPOSED ON MULTINATIONAL ENTERPRISES

23. Issues arising from conflicting requirements imposed by Member countries on multinational enterprises were considered by the drafters of the 1976 Declaration and Decisions. Of particular relevance are paragraph 11 of the Introduction to the Guidelines for Multinational Enterprises and paragraph 5 of the Revised Decision of the Council on Intergovernmental Consultations Procedures on the Guidelines. In this context, paragraph 7 of the Introduction to the Guidelines for Multinational Enterprises is also recalled.

24. Concerns arise in particular when a country's legislation or legal requirements with extraterritorial reach conflict with legislation or policies in other countries and affect, for instance, the operations of entities of multinational enterprises located in these countries. The importance and scope of such problems has tended to grow in recent years, this trend reflecting, inter alia, the increasing interdependence of OECD economies. Conduct abroad has an increasing impact on national economies and on the possibilities for avoidance of national laws. Some countries have attempted to control or counteract such developments through the adoption, modification or application of laws and regulations having an extraterritorial reach, whereas some of the countries affected have adopted blocking legislation or have taken blocking actions.

25. All in all, the risk of conflicting requirements being imposed on multinational enterprises by Member countries is viewed to be increasing, the effects of this on the investment climate tending to become more significant.

This is why the CIME has come to the conclusion that bilateral and multilateral co-operation should be strengthened in that area, to avoid such conflicts or to limit their scope, in the interest of, inter alia, promoting and safeguarding an international environment favourable to the development of trade and investment.

26. For these reasons, the CIME has agreed to the general considerations and the practical approaches set out in paragraphs 27 to 30 below, which Member countries should take into account whenever they consider the adoption, modification or application of laws or regulations which may lead to conflicting requirements being imposed on multinational enterprises.

a) General Considerations

27. In contemplating new legislation, action under existing legislation or other exercise of jurisdiction which may conflict with the legal requirements or established policies of another Member country and lead to conflicting requirements being imposed on multinational enterprises, the Member countries concerned should:

i) Have regard to relevant principles of international law;

ii) Endeavour to avoid or minimise such conflicts and the problems to which they give rise by following an approach of moderation and restraint, respecting and accommodating the interests of other Member countries (21);

iii) Take fully into account the sovereignty and legitimate economic, law enforcement and other interests of other Member countries;

iv) Bear in mind the importance of permitting the observance of contractual obligations and the possible adverse impact of measures having a retroactive effect.

28. Member countries should endeavour to promote co-operation as an alternative to unilateral action to avoid or minimise conflicting requirements and problems arising therefrom. Member countries should on request consult one another and endeavour to arrive at mutually acceptable solutions to such problems.

b) Practical Approaches

29. Recalling paragraph 5 of the Revised Decision of the Council on Intergovernmental Consultation Procedures on the Guidelines for Multinational Enterprises, Member countries also recognised that in the majority of circumstances, effective co-operation may best be pursued on a bilateral basis. On the other hand, there may be cases where the multilateral approach could be more effective.

30. Member countries should therefore be prepared to:

i) Develop mutually beneficial, practical and appropriately safeguarded bilateral arrangements, formal or informal, for notification to and consultation with other Member countries;

ii) Give prompt and sympathetic consideration to requests for notification and bilateral consultation on an ad hoc basis made by any Member country which considers that its interests may be affected by any measure of the type referred to under paragraph 27 above, taken by another Member country with which it does not have such bilateral arrangements;

iii) Inform the other concerned Member countries as soon as practicable of new legislation or regulations proposed by their Governments for adoption which have significant potential for conflict with the legal requirements or established policies of other Member countries and for giving rise to conflicting requirements being imposed on multinational enterprises;

iv) Give prompt and sympathetic consideration to requests by other Member countries for consultation in the CIME or through other mutually acceptable arrangements. Such consultations would be facilitated by notification at the earliest stage practicable;

v) Give prompt and full consideration to proposals which may be made by other Member countries in any such consultations that would lessen or eliminate conflicts.

c) Future Work

31. The CIME will continue to serve as a forum for consideration of the question of conflicting requirements, including, as appropriate, the national and international legal principles involved.

32. Member countries should be prepared to assist the CIME in its periodic reviews of the experience with the practical approaches described in paragraph 30 above.

33. The Committee shall periodically invite the Business and Industry Advisory Committee to the OECD (BIAC) and the Trade Union Advisory Committee to the OECD (TUAC) to express their views on matters relating to conflicting requirements.

34. In view of the importance attached to the foregoing considerations, it is proposed that Ministers, in endorsing the conclusions and recommendations of the present Report, make specific mention of the general principles and practical approaches described in paragraphs 27 to 30 above. It is also proposed that the Council Decision on the Guidelines for Multinational Enterprises, already referring to the subject of conflicting requirements imposed on multinational enterprises, be amended to reflect some of these results.

Working Group
Report to the SIG/IEP

July 12, 1984

CONFLICTING REQUIREMENTS ("EXTRATERRITORIALITY")
MANAGING THE PROBLEM

ISSUE

What additional steps should be taken to manage the problem of conflicting requirements ("extraterritoriality") and to respond to the demand for prior notice to and consultation with countries potentially affected by a proposed extraterritorial action?

BACKGROUND

A number of strong U.S. policy, regulatory and law enforcement interests have led to the application of U.S. law to persons and conduct abroad. These actions at times have clashed with the interests of other governments and produced political, economic and legal disputes. These governments have objected to what they see as U.S. intrusions into their sovereignty and U.S. efforts to control companies or activities in their territory in accordance with U.S. interests, policies and laws, regardless of their own, and are increasingly resorting to blocking laws to defend their interests as they perceive them.

Such clashes can have significant adverse impact on a range of U.S. interests. For example, U.S. subpoenas for financial records located in foreign bank secrecy jurisdictions are an important component of an aggressive enforcement strategy in such areas as the President's war on organized crime and narcotics trafficking; however, they sometimes produce not only adverse diplomatic and political reactions, but may also increase the obstacles foreign governments raise to our law enforcement needs over the long term. Re-export controls are vital to the integrity of a basic export control system; however, if imposed or changed retroactively or in situations exceeding the basic allied consensus, they can lead foreign companies interested in export to treat U.S. companies as the least preferred sources, as with the European effort to engineer U.S. engines and avionics out of Airbus Industry products. Applying U.S. sanctions and controls to foreign subsidiaries of U.S. firms may be important to the policy objective in question; however, this may adversely affect the investment and trade opportunities of American companies abroad. Moreover, unfair burdens can be imposed on the firms and individuals caught between conflicting requirements of two governments.

The U. S. has been actively engaged in bilateral discussions, principally with Canada and the United Kingdom, and multilateral discussions in the O.E.C.D., on the overall issue of extraterritoriality or conflicts of jurisdiction. In March, we signed a memorandum of understanding with Canada concerning notice and consultation on antitrust matters. We have been actively working to resolve extraterritorial evidence problems with the Swiss. While these governments have been seeking primarily to curtail the unilateral legal reach of the U.S. to persons and conduct in their territories, we have been seeking from them greater understanding of, and accommodation to, the legitimate U.S. interests which those U.S. legal requirements serve. For example, we have been seeking mutual law enforcement assistance agreements to provide an alternative to unilateral legal action in gathering evidence from abroad. We have also been actively exploring the request of the U.K. and Canada that procedures for prior notice and consultation be established for significant U.S. "extraterritorial" actions.

In May, the O.E.C.D. Member countries, at the ministerial level, endorsed a very general set of considerations and "practical approaches" (full text attached) regarding [extraterritoriality] conflicting requirements, including blocking actions, which we had worked out in extensive prior negotiations. The general considerations are the following:

> "In contemplating new legislation, action under existing legislation or other exercise of jurisdiction which may conflict with the legal requirements or established policies of another Member Country and lead to conflicting requirements being imposed on multinational corporations, the Member countries concerned should:
>
> have regard to relevant principles of international law;
>
> endeavor to avoid or minimise such conflicts and the problems to which they give rise by following an approach of moderation and restraint, respecting and accommodating the interests of other Member countries[1/];
>
> take fully into account the sovereignty and legitimate economic, law enforcement and other interests of other Member countries; and

---

1/ "Applying the principle of comity, as it is understood in some Member countries, includes following an approach of this nature in exercising one's jurisdiction."

bear in mind the importance of permitting the observance of contractual obligations and the possible adverse impact of measures having a retroactive effect.

"Member countries should endeavor to promote co-operation as an alternative to unilateral action to avoid or minimise conflicting requirements and problems arising therefrom. Member countries should on request consult one another and endeavor to arrive at mutually acceptable solutions to such problems."

The "practical approaches" agreed in the O.E.C.D. are, in essence, to develop bilateral notice and consultation arrangements, consider requests for bilateral or multilateral notice and consultation outside such arrangements, give notice as soon as practicable of proposed new laws or regulations with significant potential for conflicts over "extraterritoriality", to bear in mind the value of early notice of other potentially significant extraterritorial actions, and to give prompt and full consideration to proposals which may be made by other Member countries in any such consultations that would lessen or eliminate conflicts.

This set of general considerations and approaches, which successfully defused the "extraterritoriality" issue for the May Ministerial and June Summit, was made possible by the advanced stage which had been reached in the Executive Branch consideration of how to manage the "extraterritoriality" problem, in particular a draft report of the Undersecretaries' Working Group. That draft set out an essentially agreed discussion of the problem and an action proposal for internal Executive Branch coordination and for notification of and consultation with foreign governments.

At present, the broadest outlines of the Working Group's draft action proposal regarding foreign governments have been agreed in the O.E.C.D.; talks are continuing with the United Kingdom and Canada on such issues as the extra-territorial application of export controls and anti-trust laws, [and] as well as subpoenas for off-shore documents. However, the action proposals regarding foreign government notice and consultation and internal Executive Branch coordination remain to be completed and confirmed.

PROPOSAL

I. INTERNAL COORDINATION

A. Where U.S. actions which impinge upon foreign jurisdictions are contemplated, international law and comity call for us to consider the potentially conflicting sovereign

interests, laws or policies of those jurisdictions in deciding whether and how to act. This is also required by our need to have foreign cooperation on export, law enforcement, and other international matters and to avoid unnecessay harm to our bilateral relations. It is Executive Branch policy to do so.2/

B. As a general matter, each Executive Branch agency with regulatory or law enforcement responsibilities which proposes to take actions with extraterritorial impact has primary responsibility to assure proper consideration of such foreign interests, laws or policies.

C. An agency which proposes to take an action which is directed at conduct abroad and which it has reason to believe has significant potential for raising [extraterritorial] concerns over extraterritoriality on the part of a foreign state3/ will notify and coordinate with the Secretary of State or his designee, subject to the constraints imposed by the relevant legal and operating requirements.4/

2/ This statement of policy, and the following provisions regarding internal coordination and notification of and consultation with foreign governments are intended solely for the guidance of the departments and agencies of the United States Government with regulatory or law enforcement responsibilities. They are not intended to, do not, and may not be relied upon to create any substantive or procedural rights enforceable by law by any party in any civil or criminal proceeding.

3/ As a general rule, this category would not include such matters as: action taken under established working arrangements with the competent authorities of foreign governments, whether in law enforcement generally, or under specific arrangements such as tax or customs agreements; routine license denials under clearly established foreign assets or re-export control guidelines where no factors indicate special foreign government concern; actions taken by officers stationed abroad within established country-team arrangements with the foreign government concerned; and actions relating to the requirements for doing business in the United States, such as quality or labelling requirements for goods to be sold here. It would include significant statements of official U.S. views on extraterritoriality or conflicting requirements, the requirements of international law or comity in such matters, or foreign government interests or positions regarding them.

4/ Operating requirements would generally preclude notice of actions which are both high volume and (continued next page)

The coordination is intended to assist the agency in considering the foreign interests, laws or policies, alternatives to unilateral action, and means to minimize difficulties.

D. Coordination procedures should ensure against undue operational burdens[5/] or delays, duplication of existing arrangements and the introduction of improper considerations into the administration of the responsibilities of the respective agencies. The normal minimum time for notification should be five working days in advance of the proposed action.

E. Agencies will notify the Secretary of State or his designee, or the Chief of the U.S. Diplomatic Mission, of investigative activity proposed to be carried out by U.S. officials or agents in a foreign jurisdiction for which the consent of the foreign government has not yet been obtained.

F. Such coordination will not affect the legal responsibilities and authorities of the notifying agencies.

II. NOTIFICATION OF FOREIGN GOVERNMENTS

A. The United States will implement the understanding on notice and consultation regarding U.S. actions which impose conflicting requirements on multinational enterprises, reached

---

(continued) of largely de minimis potential for creating extraterritoriality problems, such as export license pre-clearance inquiries or tax inquiries mailed to a person abroad. Meaningful coordination may be limited or precluded, in certain cases, by: grand jury, tax information and other legal secrecy requirements; concern for human life or safety; time constraints and the need to avoid disclosures which might prejudice litigation, investigation, or sensitive sources and methods.

5/ For operational reasons, the Department of Justice would not set up procedures to identify for coordination of civil or criminal law enforcement matters handled outside of Department of Justice [in] Washington headquarters, but would identify for coordination matters handled or considered in Washington, such as the Export Administration Act, including its antiboycott provisions, munitions control, IEEPA, Trading with the Enemy Act, neutrality laws, anti-trust (under existing procedures), and the enforcement of off-shore subpoenas for documents in jurisdictions likely to object to such actions.

within the O.E.C.D., and will apply the same general considerations and practical approaches to other U.S. actions which have significant potential for raising [extraterritoriality] concerns in friendly nations regarding conflicting requirements or extraterritoriality.

B. The United States, accordingly, is prepared to:

1. Develop mutually beneficial, practical and appropriately safeguarded bilateral arrangements, formal or informal, for notification to and consultation with other friendly governments.

2. Give prompt and sympathetic consideration to requests for notification and bilateral consultation on an ad hoc basis by a country which considers that its interests may be affected by a United States measure with extraterritorial effect.

3. Inform the other concerned O.E.C.D. countries as soon as practicable of new legislation or regulations proposed by the Administration which have significant potential for conflict with the legal requirements or established policies of those countries and for giving rise to conflicting requirements being imposed on persons or firms in their territory.

4. Give prompt and sympathetic consideration to requests by friendly countries for consultations under multilateral arrangements in appropriate cases.

5. Give prompt and full consideration to proposals which may be made by other countries in bilateral or multilateral consultations that would lessen or eliminate conflicts.

C. Under arrangements for notification or consultation through the Department of State regarding action of another agency, the consent of that other agency will be required.

D. Where appropriate, notice and consultation arrangements would be negotiated in the context of efforts to secure enhanced cooperation with foreign governments in meeting U.S. objectives. In particular, it is the policy of the United States to seek mutual assistance arrangements in law enforcement and to further that policy through the inclusion of bilateral arrangements for notice and consultation.